



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1994

Mr. Russell S. Johnson
Mr. L. Eric Friedland
Davidson & Troilo
613 N.W. Loop 410, Suite 1000
San Antonio, Texas 78216-5584

OR94-856

Dear Mr. Johnson and Mr. Friedland:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 25630.

The San Antonio Water System (the "water system"), which you represent, has received two requests for information relating to the Edwards Aquifer Authority. One of the requestors seeks "complete copies of all data, documents, correspondence, records, minutes, invoices and other printed materials which are in the files or the possession of SAWS or SAWS attorneys concerning the following:"

1. All documents received by SAWS or SAWS attorneys from any agency or office of the State of Texas as said documents concern the Edwards Aquifer Authority or SB 1477.
2. All documents sent to any agency or office of the State of Texas from SAWS or SAWS attorneys as said documents concern the Edwards Aquifer Authority or SB 1477.
3. All documents concerning the Edwards Aquifer Authority or SB 1477 which involve any agency or office of the State of Texas.

The other requestor seeks the following information:

1. Complete copies of the detailed billing statements submitted by the consulting firm of Shipley & Associates for services performed or to be performed during the period beginning September 1988 and ending February 25, 1994.

2. Complete copies of the detailed monthly billing statements submitted to SAWS by the firm Davidson & Troilo . . . for legal and legislative services performed during the period of September 1, 1992, through February 28, 1994 [to the extent that they relate to certain specified items].
3. Copies of all billing statements or invoices . . . which were submitted to SAWS for legal and legislative services, for the period of May 1, 1991, through February 28, 1994 [to the extent that they relate to certain specified items].
4. All documents in the files of Davidson & Troilo related to the implementation of SB 1477, related to the submissions by the Secretary of State of the Department of Justice concerning preclearance of SB 1477, related to the request for reconsideration of the Department of Justice to SB 1477, related to the conflict and comparative powers between the Edwards Aquifer Authority (EAA) and the Edwards Underground Water District (EUWD), related to meetings with the Justice Department and the Governor's staff, related to the dissolution of the Edwards Underground Water district or co-existence of the EAA and the EUWD, related to withdrawal from the EUWD, related to impediments to severance of Section 1.41 from SB 1477, related to escaping the Judgment of Judge Bunton in the Sierra Club case, related to response to potential request for injunctive relief by opponents of EAA, and related to the SAWS proposed rules regarding permitting requirements of SB 1477.¹ [Footnote added.]

You advise us that the water system will make some of the requested information available to the requestor. You have submitted representative samples of the remaining information to us for review. You claim that sections 552.103(a), 552.106, and 552.107 of the Government Code except the remaining information from required public disclosure.

Section 552.103(a) of the Government Code excepts information:

¹The water system also received a request for certain attorney billing information for September and October 1993 and January 1994. We address this request for information in Open Records Letter No. 94-855 [ID# 25092] (1994). Our conclusion in Open Records Letter No. 94-855 controls the release of the fee billing information to the second requestor here. We note that the water system has received two additional requests. We assigned your request for a decision about these requests ID# 30859.

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which . . . a political subdivision is or may be a party or to which an officer or employee of . . . a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that . . . the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). Whether a governmental body may anticipate litigation must be determined on a case-by-case basis. Open Records Decision No. 452 (1986). We have examined the information for which you seek protection under section 552.103(a) and conclude that you have made the requisite showing that the information relates to pending litigation. Accordingly, the water system may withhold this information under section 552.103(a) of the Government Code.²

You also claim that section 552.107 of the Government Code excepts some of the requested information from required public disclosure. Section 552.107 excepts information if:

(1) it is information that . . . an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Section 552.107(1) protects information that reveals client confidences to an attorney, including facts and requests for legal advice, or that reveals the attorney's legal advice. See Open Records Decision No. 574 (1990). We have examined the submitted information for which you seek section 552.107 protection and conclude that it constitutes information that reveals client confidences to an attorney or that reveals the attorney's legal advice. Accordingly, the water system may withhold this information under section 552.107 of the Government Code. As we resolve this matter under sections 552.103(a) and 552.107, we need not address the applicability of section 552.106 at this time.

²We assume, however, that the opposing parties in the pending litigation have not previously had access to the information at issue; absent special circumstances, once all parties to the litigation have obtained the information, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the pending litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Government Section

KHG/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 25630

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